**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant	:	Craig D. CUTTNER et al.
Serial No.	:	10/620,964
Filing Date	:	July 15, 2003
For	:	SYSTEMS AND METHODS FOR PERFORMING QUALITY ASSURANCE ON INTERACTIVE TELEVISION AND SOFTWARE APPLICATION DATA DELIVERED VIA A NETWORK

Group Art Unit :　　2133

Examiner	:	Mujtaba M. Chaudry
Confirmation No.	:	9701

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Alexandria, VA 22313-1450
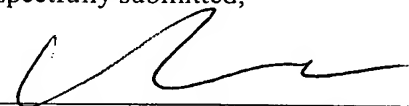
APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

Sir:

Further to the Notice of Appeal dated March 22, 2007 (received at the PTO on March 27, 2007) for the above-referenced application, enclosed are three copies of an Appeal Brief. A **one-month extension of time** for filing the Appeal Brief is requested to extend the time for responding from May 27, 2007 to June 27, 2007.

The Commissioner is hereby authorized to charge payment of the 37 C.F.R. § 41.20(b)(2) appeal brief filing fee of **$500**, as well as the **$120** fee for the extension of time, and any additional fees associated with this communication, to the deposit account of **Kenyon & Kenyon LLP**, deposit account number **11-0600**.

Respectfully submitted,

Dated: June 14, 2007

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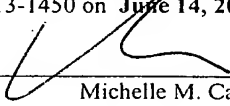**CUSTOMER NUMBER 26646**

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APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

Sir:

On March 22, 2007, Appellants submitted a Notice of Appeal from the final rejection of claims 1-19 and 40-62 contained in the Final Office Action issued by the U.S. Patent and Trademark Office (the "PTO") on January 23, 2007 in the above-identified patent application.

In accordance with 37 C.F.R. § 41.37, this brief is submitted in support of the appeal of the final rejection of claims 1-19 and 40-62. For at least the reasons set forth below, the final rejection of claims 1-19 and 40-62 should be reversed.

1. REAL PARTY IN INTEREST

The real party in interest in the present appeal is:

Home Box Office, Inc.

1100 Avenue Of The Americas
New York, NY 10036

Home Box Office, Inc. is the assignee of the entire right, title, and interest in the present

application.

2.   RELATED APPEALS AND INTERFERENCES

There are no interferences or other appeals related to the present application.

3.   STATUS OF CLAIMS

Claims 1-19 are currently pending and stand finally rejected under 35 U.S.C. § 103(a)

as being unpatentable over U.S. Patent No. 5,844,918 to Kato (hereinafter Kato) in view of

information that the Examiner has characterized as "Applicants Admitted Prior Art."

Claims 20 to 39 have been canceled.

Claims 40-62 are currently pending and stand finally rejected under 35 U.S.C. §

103(a) as being unpatentable over Kato in view of "Applicants Admitted Prior Art."

Appellants appeal the rejection of claims 1-19 and 40-62. A copy of all of the claims

involved in the appeal is attached hereto in the Appendix.

4.   STATUS OF AMENDMENTS

There are currently no amendments pending.

5.   SUMMARY OF THE CLAIMED SUBJECT MATTER

Generally, the pending claims are directed to systems and methods performing quality

assurance using "code point values" on interactive television and software application data

that is delivered via network. These code point values are calculated by performing an integrity check (e.g., a hash code or checksum) on the data. See, e.g., page 5, lines 21-32. Independent claim 1 recites a method for detecting errors in a data package which receives at least two data elements, separately receives a set of desired code point values, determines a set of current code point values for the at least two data elements and compares the desired code point values to the current code point values. See e.g., page 5, line 12 to page 6, line 7 and Figures 2-3 of Appellants' specification. Independent claim 12 recites a method for detecting changes in a data package transmitted over a network where a code point monitor receives, from a first network component, a set of current code point values corresponding to a data package (determined at the first network component based on the data package received by the first network component), the code point monitor receives, from a second network component, a set of desired code point values corresponding to the data package, and compares the set of current code point values to the set of desired code point values. See e.g., page 6, line 7-17 and Figure 2-3 of Appellants' specification. Independent claim 40 recites an article of manufacture storing instructions (e.g., software) for the detection of errors in a data package by: receiving at least two data elements, separately receiving a set of desired code point values, determining a set of current code point values for the at least two data elements and comparing the desired code point values to the current code point values. See e.g., page 5, line 12 to page 6, line 7 and Figures 2-3 of Appellants' specification. Independent claim 51 recites an article of manufacture storing instructions (e.g., software) for the detection of changes in a data package transmitted over a network where a code point monitor receives, from a first network component, a set of current code point values corresponding to a data package (determined at the first network component based on the data package received by the first network component), the code point monitor receives, from a second network

component, a set of desired code point values corresponding to the data package, and compares the set of current code point values to the set of desired code point values. See e.g., page 6, line 7-17 and Figure 2-3 of Appellants' specification. Independent claim 62 recites a method for detecting errors in a data package which receives a set of desired code point values corresponding to a data package, stores the set of desired code point values, receives at least two data elements after the storing the set of desired code point values, determines a set of current code point values for the at least two data elements, and compares the set of current code point values to the stored set of desired code point values. See e.g., page 5, line 12 to page 6, line 7 and Figures 2-3 of Appellants' specification.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-19 and 40-62 are currently pending and stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Kato in view of information the Examiner has characterized as "Applicants Admitted Prior Art."

7. ARGUMENTS

Claims 1 to 19, and 40 to 62 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kato and that which the Examiner refers to as "Applicants Admitted Prior Art (AAPA)." Without addressing or agreeing with the Examiner's characterization of any of Appellants' disclosure as constituting an admission of prior art, it is respectfully submitted that the combination of Kato and AAPA does not render unpatentable any of the present claims as explained below.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28

U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria

must be satisfied. First, there must be some suggestion or motivation to modify or combine

reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This

teaching or suggestion to make the claimed combination must be found in the prior art and

not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed.

Cir. 1991). Second, there must be a reasonable expectation of success. *In re Merck & Co.,*

Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must

teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580

(C.C.P.A. 1974).

A. Claims 1-9 and 60 are not obvious in view of the combination

Claim 1 of the present application recites:

> A method for detecting errors in a data package, comprising:
> receiving at least two data elements;
> receiving, separately from the at least two data elements,
> a set of desired code point values corresponding to a data
> package;
> determining a set of current code point values for the at
> least two data elements; and
> comparing the set of current code point values to the set
> of desired code point values.

Kato provides for transmission of data segments having appended thereto error

detecting codes (see, e.g., Figure 5), i.e., the error detecting codes (relied upon by the

Examiner as allegedly disclosing the recited code point values) are sent <u>with</u> the data

segments (relied upon by the Examiner as allegedly disclosing the recited at least two data

elements). The Office Action admits that the combination of Kato and AAPA does not

disclose the step of "receiving, separately from the at least two data elements, a set of desired

code point values corresponding to a data package." Office Action at page 4, lines 10-11.

Instead, the Examiner asserts that it would have been obvious to one of ordinary skill in the

art at the time the invention was made to modify the system of Kato for the error correcting

codes to be sent separately from the data segments because "transmitting data and

corresponding code point values separately would have increased synchronization

capabilities." Office Action at page 5, lines 16-19. The Examiner proceeds from articulating

a goal in data communications directly to a conclusion that it would therefore be obvious to

transmit data and corresponding code point values separately, without citation to any prior art

as factual support for this assertion or any reasoned argumentation. The suggestion to modify

Kato as proposed by the Examiner is not found in the prior art, but is instead based on

Appellants' disclosure, for example, at page 8, lines 1 to 12 of the Specification, which

explains that there is a need to ensure synchronization of data elements so that data elements

of a single data package retain their logical association through a network and further explains

that transmitting code points separately from data elements with which they are associated

provides such synchronization.

The Examiner impermissibly uses Appellants' disclosure as a roadmap for gleaning

therefrom a need to modify prior art methods, a particular way in which to modify the prior

art methods, and an indication as to how the particular way in which to modify prior art

methods satisfies the need. The method described and claimed in the present application runs

counter to the methods described in Kato in which an error code associated with a data

element is transmitted with or appended to the data element with which it is associated. The

Examiner has cited no reference that discloses the method of claim 1 or that provides any

suggestion or motivation to so modify prior art methods of transmitting error detecting codes.

The Examiner's argument that the data segments and error correcting codes of Kato

are received separately because they are received in a serial fashion and then maintained

separately (Office Action at page 2, line 16 – page 3, line 3) effectively destroys the meaning

of the word "separately." First, in Kato, the error correcting code is described as being

"append[ed]" to the data segment to form a "transmission data packet" that is then transmitted

to the receiver (Kato at 10:10-15). Only after the transmission data packet is received at the

"data receiver" are the error correcting codes described as being "separately maintained"

(Kato at 10:16-35). There is no mention of the error correcting codes being separately

transmitted, rather, to the contrary, they are expressly described as appended to the data

segments within the transmission data packet. The Examiner's conflation of receiving the

transmission data packet serially (i.e., a single bit at a time, one consecutive bit after another)

with receiving a data segment separately from its corresponding error detecting code is

similarly contrary to the fact that Kato describes them as appended to one another and

contained within a single transmission data packet.

Accordingly, the combination of Kato and AAPA does not disclose or suggest the

features of claim 1, so that the combination of Kato and AAPA does not render unpatentable

claim 1.

Claims 2-9 and 60 depend from independent claim 1, and thus are patentable for at

least the reasons that claim 1 is patentable.

B. Claim 10 is not obvious in view of the combination

Claim 10 depends from claim 1 and is thus patentable over the combination of Kato

and AAPA for at least the reasons that claim 1 is patentable as explained above.

Furthermore, claim 10 is also patentable for the additional reasons explained below.

Claim 10 of the present application recites:

> The method of claim 1, wherein the at least two data elements
> and the set of desired code points are received from at least one
> network component via different data paths.

As discussed above, the error detecting codes of Kato are appended to the data

segments of Kato in order to form a transmission data packet that is transmitted to the data receiver (see, e.g., Kato at Figure 5 and 10:10-15). There is no disclosure in Kato of the data segments and error correcting codes traveling from the transmitter of Kato to the receiver of Kato by different data paths and the Examiner has cited no other reference in support of the rejection of claim 10 (Office Action at page 7).

Accordingly, the combination of Kato and AAPA does not disclose or suggest the features of claim 10, so that the combination of Kato and AAPA does not render unpatentable claim 10.

C. Claim 11 is not obvious in view of the combination

Claim 11 depends from claim 1 and is thus patentable over the combination of Kato and AAPA for at least the reasons that claim 1 is patentable as explained above. Furthermore, claim 11 is also patentable for the additional reasons explained below.

Claim 11 of the present application recites:

> The method of claim 1, wherein the at least two data elements is received from a first network component and the set of desired code points is received from a second network component.

As discussed above, the error detecting codes of Kato are appended to the data segments of Kato in order to form a transmission data packet that is transmitted to the data receiver (see, e.g., Kato at Figure 5 and 10:10-15). There is no disclosure in Kato of the data segments being received from one network component and error correcting codes being received from a second, *different* network component and the Examiner has cited no other reference in support of the rejection of claim 11 (Office Action at page 7).

Accordingly, the combination of Kato and AAPA does not disclose or suggest the features of claim 11, so that the combination of Kato and AAPA does not render unpatentable claim 11.

D. Claim 59 is not obvious in view of the combination

Claim 59 depends from claim 1 and is thus patentable over the combination of Kato

and AAPA for at least the reasons that claim 1 is patentable as explained above.

Furthermore, claim 59 is also patentable for the additional reasons explained below.

Claim 59 of the present application recites:

> The method of claim 1, wherein (a) the at least two data
> elements and (b) the set of desired code point values are
> received over different communication paths with respect to
> each other.

As discussed above, the error detecting codes of Kato are appended to the data

segments of Kato in order to form a transmission data packet that is transmitted to the data

receiver (see, e.g., Kato at Figure 5 and 10:10-15). There is no disclosure in Kato of the data

segments and error correcting codes traveling from the transmitter of Kato to the receiver of

Kato by different communication paths and the Examiner has cited no other reference in

support of the rejection of claim 59 (Office Action at page 17).

Accordingly, the combination of Kato and AAPA does not disclose or suggest the

features of claim 59, so that the combination of Kato and AAPA does not render unpatentable

claim 59.

E. Claim 61 is not obvious in view of the combination

Claim 61 depends from claim 1 and is thus patentable over the combination of Kato

and AAPA for at least the reasons that claim 1 is patentable as explained above.

Furthermore, claim 61 is also patentable for the additional reasons explained below.

Claim 61 of the present application recites:

> The method of claim 1, wherein the at least two data elements
> are transmitted as a first unit and the set of desired code point
> values are transmitted as a second unit different from the first
> unit.

As discussed above, the error detecting codes of Kato are appended to the data

segments of Kato in order to form a transmission data packet (i.e., a single unit) that is transmitted to the data receiver (see, e.g., Kato at Figure 5 and 10:10-15). There is no disclosure in Kato of the data segments being transmitted as one unit and error correcting codes being transmitted as a second, *different* unit and the Examiner has cited no other reference in support of the rejection of claim 61 (Office Action at page 17).

Accordingly, the combination of Kato and AAPA does not disclose or suggest the features of claim 61, so that the combination of Kato and AAPA does not render unpatentable claim 61.

F. Claims 12-19 are not obvious in view of the combination

Claim 12 of the present application recites:

> A method for detecting changes in a data package transmitted over a network, comprising:
> receiving, from a first network component, a set of current code point values corresponding to a data package at a code point monitor;
> receiving, from a second network component, a set of desired code point values corresponding to the data package at the code point monitor; and
> comparing the set of current code point values to the set of desired code point values,
> wherein the set of current code point values is determined at the first network component based on the data package received by the first network component.

Kato provides for transmission of data packets having appended thereto error detecting codes (see, e.g., Figure 5), i.e., the error detecting codes (relied upon by the Examiner as allegedly disclosing the recited code point values) are sent <u>with</u> the data segments (relied upon by the Examiner as allegedly disclosing the recited data package). The Office Action admits that the combination of Kato and AAPA does not disclose the step of "receiving, from a second network component, a set of desired code point values corresponding to the data package at the code point monitor." Office Action at page 8, lines

7-8.

However, the Examiner then misinterprets the claim as requiring transmission of **data** and **code point values** from two different network components and asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Kato in that fashion. Office Action at page 8, line 22 – page 9, line 5. In fact, claim 12 recites receiving a set of **current code point values** from a first network component and a set of **desired code point values** from a second network component and then comparing the two received sets of code point values. The Examiner's rejection does not address this embodiment of the present invention (described, for example, at page 6, line 7-17 and Figure 2-3 of Appellant's specification) and Kato does describe such a method.

Accordingly, the combination of Kato and AAPA does not disclose or suggest the features of claim 12, so that the combination of Kato and AAPA does not render unpatentable claim 12.

Claims 13-19 depend from independent claim 12, and thus are patentable for at least the reasons that claim 12 is patentable.

G. Claims 40-48 are not obvious in view of the combination

Claim 40 of the present application recites:

> An article of manufacture comprising a computer-readable medium having stored thereon instructions adapted to be executed by a processor, the instructions which, when executed, define a series of steps to be used to detect errors in a data package, said steps comprising:
> receiving at least two data elements;
> receiving, separately from the at least two data elements, a set of desired code point values corresponding to a data package;
> determining a set of current code point values for the at least two data elements; and
> comparing the set of current code point values to the set of desired code point values.

Kato provides for transmission of data segments having appended thereto error detecting codes (see, e.g., Figure 5), i.e., the error detecting codes (relied upon by the Examiner as allegedly disclosing the recited code point values) are sent <u>with</u> the data segments (relied upon by the Examiner as allegedly disclosing the recited at least two data elements). The Office Action admits that the combination of Kato and AAPA does not disclose the step of "receiving, separately from the at least two data elements, a set of desired code point values corresponding to a data package." Office Action at page 11, lines 6-7. Instead, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Kato for the error correcting codes to be sent separately from the data segments because "transmitting data and corresponding code point values separately would have increased synchronization capabilities." Office Action at page 12, lines 1-4. The Examiner proceeds from articulating a goal in data communications directly to a conclusion that it would therefore be obvious to transmit data and corresponding code point values separately, without citation to any prior art as factual support for this assertion or any reasoned argumentation. The suggestion to modify Kato as proposed by the Examiner is not found in the prior art, but is instead based on Appellants' disclosure, for example, at page 8, lines 1 to 12 of the Specification, which explains that there is a need to ensure synchronization of data elements so that data elements of a single data package retain their logical association through a network and further explains that transmitting code points separately from data elements with which they are associated provides such synchronization.

The Examiner impermissibly uses Appellants' disclosure as a roadmap for gleaning therefrom a need to modify prior art methods, a particular way in which to modify the prior art methods, and an indication as to how the particular way in which to modify prior art

methods satisfies the need. The article of manufacture described and claimed in the present application runs counter to the methods described in Kato in which an error code associated with a data element is transmitted with or appended to the data element with which it is associated. The Examiner has cited no reference that discloses the article of manufacture of claim 40 or that provides any suggestion or motivation to so modify prior art methods of transmitting error detecting codes.

The Examiner's argument that the data segments and error correcting codes of Kato are received separately because they are received in a serial fashion and then maintained separately (Office Action at page 2, line 16 – page 3, line 3) effectively destroys the meaning of the word "separately." First, in Kato, the error correcting code is described as being "append[ed]" to the data segment to form a "transmission data packet" that is then transmitted to the receiver (Kato at 10:10-15). Only after the transmission data packet is received at the "data receiver" are the error correcting codes described as being "separately maintained" (Kato at 10:16-35). There is no mention of the error correcting codes being separately transmitted, rather, to the contrary, they are expressly described as appended to the data segments within the transmission data packet. The Examiner's conflation of receiving the transmission data packet serially (i.e., a single bit at a time, one consecutive bit after another) with receiving a data segment separately from its corresponding error detecting code is similarly contrary to the fact that Kato describes them as appended to one another and contained within a single transmission data packet.

Accordingly, the combination of Kato and AAPA does not disclose or suggest the features of claim 40, so that the combination of Kato and AAPA does not render unpatentable claim 40.

Claims 41-48 depend from independent claim 40, and thus are patentable for at least

the reasons that claim 40 is patentable.

H. Claim 49 is not obvious in view of the combination

Claim 49 depends from claim 40 and is thus patentable over the combination of Kato

and AAPA for at least the reasons that claim 40 is patentable as explained above.

Furthermore, claim 49 is also patentable for the additional reasons explained below.

Claim 49 of the present application recites:

> The article of manufacture of claim 40, wherein the at least two
> data elements and the set of desired code points are received
> from at least one network component via different data paths.

As discussed above, the error detecting codes of Kato are appended to the data

segments of Kato in order to form a transmission data packet that is transmitted to the data

receiver (see, e.g., Kato at Figure 5 and 10:10-15). There is no disclosure in Kato of the data

segments and error correcting codes traveling from the transmitter of Kato to the receiver of

Kato by different data paths and the Examiner has cited no other reference in support of the

rejection of claim 49 (Office Action at page 13).

Accordingly, the combination of Kato and AAPA does not disclose or suggest the

features of claim 49, so that the combination of Kato and AAPA does not render unpatentable

claim 49.

I. Claim 50 is not obvious in view of the combination

Claim 50 depends from claim 40 and is thus patentable over the combination of Kato

and AAPA for at least the reasons that claim 40 is patentable as explained above.

Furthermore, claim 50 is also patentable for the additional reasons explained below.

Claim 50 of the present application recites:

> The article of manufacture of claim 40, wherein the at least two
> data elements is received from a first network component and
> the set of desired code points is received from a second network
> component.

As discussed above, the error detecting codes of Kato are appended to the data segments of Kato in order to form a transmission data packet that is transmitted to the data receiver (see, e.g., Kato at Figure 5 and 10:10-15). There is no disclosure in Kato of the data segments being received from one network component and error correcting codes being received from a second, *different* network component and the Examiner has cited no other reference in support of the rejection of claim 50 (Office Action at pages 13-14).

Accordingly, the combination of Kato and AAPA does not disclose or suggest the features of claim 50, so that the combination of Kato and AAPA does not render unpatentable claim 50.

J. Claims 51-58 are not obvious in view of the combination

Claim 51 of the present application recites:

> An article of manufacture comprising a computer-readable medium having stored thereon instructions adapted to be executed by a processor, the instructions which, when executed, define a series of steps to be used to detect changes in a data package transmitted over a network, said steps comprising:
> receiving, from a first network component, a set of current code point values corresponding to a data package at a code point monitor;
> receiving, from a second network component, a set of desired code point values corresponding to the data package at the code point monitor; and
> comparing the set of current code point values to the set of desired code point values,
> wherein the set of current code point values is determined at the first network component based on the data package received by the first network component.

Kato provides for transmission of data packets having appended thereto error detecting codes (see, e.g., Figure 5), i.e., the error detecting codes (relied upon by the Examiner as allegedly disclosing the recited code point values) are sent <u>with</u> the data segments (relied upon by the Examiner as allegedly disclosing the recited data package). The Office Action admits that the combination of Kato and AAPA does not disclose the step of

"receiving, from a second network component, a set of desired code point values corresponding to the data package at the code point monitor." Office Action at page 14, lines 18-19.

However, the Examiner then misinterprets the claim as requiring transmission of **data** and **code point values** from two different network components and asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Kato in that fashion. Office Action at page 15, lines 11-16. In fact, claim 51 recites receiving a set of **current code point values** from a first network component and a set of **desired code point values** from a second network component and then comparing the two received sets of code point values. The Examiner's rejection does not address this embodiment of the present invention (described, for example, at page 6, line 7-17 and Figure 2-3 of Appellant's specification) and Kato does describe such a system.

Accordingly, the combination of Kato and AAPA does not disclose or suggest the features of claim 51, so that the combination of Kato and AAPA does not render unpatentable claim 51.

Claims 52-58 depend from independent claim 51, and thus are patentable for at least the reasons that claim 51 is patentable.

J. Claim 62 is not obvious in view of the combination

Claim 62 of the present application recites:

> A method for detecting errors in a data package, comprising:
> receiving a set of desired code point values
> corresponding to a data package;
> storing the set of desired code point values;
> after the storing of the set of desired code point values,
> receiving at least two data elements;
> determining a set of current code point values for the at
> least two data elements; and
> comparing the set of current code point values to the
> stored set of desired code point values.

Kato provides for transmission of data packets having appended thereto error detecting codes (see, e.g., Figure 5), i.e., the error detecting codes (relied upon by the Examiner as allegedly disclosing the recited code point values) are sent with the data segments (relied upon by the Examiner as allegedly disclosing the recited data package). In contrast, claim 62 recites receiving a set of desired code point values, storing those desired code point values, and receiving, *after* the desired code point values have been stored, at least two data elements. Because the error correcting codes of Kato are appended (i.e., attached after) the data segments to form the transmission data packet (see, e.g., Figure 5 of Kato), the error correcting codes cannot be received and stored *before* the data segments as recited in claim 62. Thus, Kato's disclosure of appending the error correcting codes to the data segments teaches away from the invention of claim 62 and cannot render it obvious.

Furthermore, the Examiner's rejection of claim 62 appears to be based on a misinterpretation of the claim as requiring transmission from different network components (Office Action at page 18, lines 7-8), but in any event Kato cannot render the claim obvious as discussed above.

Accordingly, the combination of Kato and AAPA does not disclose or suggest the features of claim 62, so that the combination of Kato and AAPA does not render unpatentable claim 62.

8.   **CLAIMS APPENDIX**

An appendix containing the claims involved in the appeal is attached hereto.

9. EVIDENCE APPENDIX

No evidence has been submitted pursuant to 37 C.F.R. §§ 1.130, 1.131 or 1.132. No other evidence has been entered by the Examiner or relied upon by Appellant in the appeal. An "Evidence Appendix" is nevertheless attached hereto.

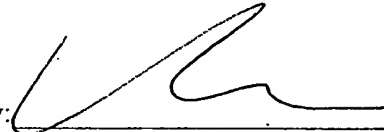## 10. RELATED PROCEEDINGS APPENDIX

There are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants or the assignee, Home Box Office, Inc., "which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal." As such, there no "decisions rendered by a court or the Board in any proceeding identified pursuant to [37 C.F.R. § 41.37(c)(1)(ii)]" to be submitted. A "Related Proceedings Appendix" is nevertheless attached hereto.

11. CONCLUSION

For at least the reasons indicated above, Appellants respectfully submit that the art of record does not teach or suggest Appellants' invention as recited in the claims of the above-identified application. Accordingly, it is respectfully submitted that the invention recited in the claims of the present application is new, non-obvious and useful. Reversal of the Examiner's rejections of the claims is therefore respectfully requested.

Respectfully submitted,

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CLAIMS APPENDIX

1. A method for detecting errors in a data package, comprising:

receiving at least two data elements;

receiving, separately from the at least two data elements, a set of desired code point values corresponding to a data package;

determining a set of current code point values for the at least two data elements; and

comparing the set of current code point values to the set of desired code point values.

2. The method of claim 1, further comprising:

determining if a change has occurred in the data package based on the comparison of the sets of code point values; and

if a change is determined to have occurred, requesting retransmission of at least one of the at least two data elements.

3. The method of claim 1, further comprising:

determining if a change has occurred in the data package based on the comparison of the sets of code point values; and

if a change is determined to have occurred, preventing the use of at least one of the at least two data elements.

4. The method of claim 1, further comprising:

determining if a change has occurred in the data package based on the comparison of the sets of code point values; and

if a change is determined to have occurred:

identifying the particular data element, of the at least two data elements, in

which the change occurred, and

determining a corrective action to perform.

5. The method of claim 4, wherein the corrective action is requesting a retransmission of at

least one of the at least two data elements.

6. The method of claim 4, wherein the corrective action is preventing use of at least one of the

at least two data elements.

7. The method of claim 4, wherein the corrective action to perform is determined based on

characteristics of the particular data element in which the change occurred.

8. The method of claim 1, further comprising:

determining if a change has occurred in the data package based on the comparison of

the sets of code point values; and

if a change is determined to have occurred:

identifying the particular data element, of the at least two data elements, in

which the change occurred, and

based on the similarity of a watermark in the particular data element in which

the change occurred to a corresponding watermark in the set of desired code point

values, determining that the particular data element may still be used.

9. The method of claim 7, wherein the corrective action is determined based on the particular

data element in which the change occurred being related to the content rating of the data

package.

10. The method of claim 1, wherein the at least two data elements and the set of desired code

points are received from at least one network component via different data paths.

11. The method of claim 1, wherein the at least two data elements is received from a first

network component and the set of desired code points is received from a second network

component.

12. A method for detecting changes in a data package transmitted over a network, comprising:

      receiving, from a first network component, a set of current code point values

corresponding to a data package at a code point monitor;

      receiving, from a second network component, a set of desired code point values

corresponding to the data package at the code point monitor; and

      comparing the set of current code point values to the set of desired code point values,

      wherein the set of current code point values is determined at the first network

component based on the data package received by the first network component.

13. The method of claim 12, wherein the first network component is a set top box.

14. The method of claim 12, wherein the code point monitor logs the result of the

comparison.

15. The method of claim 12, further comprising:

determining if a change has occurred in the data package based on the comparison of

the sets of code point values; and

if a change is determined to have occurred, transmitting an instruction to perform a

corrective action.

16. The method of claim 15, wherein the corrective action is preventing use of at least a

portion of the data package.

17. The method of claim 15, wherein the corrective action is requesting retransmission of at

least a portion of the data package.

18. The method of claim 15, further comprising:

determining the particular data element in which the change occurred, and

determining the corrective action based on characteristics of the particular data

element in which the change occurred.

19. The method of claim 18, wherein the corrective action is determined based on the

particular data element in which the change occurred being related to a content rating of the

data package.

40. An article of manufacture comprising a computer-readable medium having stored thereon

instructions adapted to be executed by a processor, the instructions which, when executed, define

a series of steps to be used to detect errors in a data package, said steps comprising:

receiving at least two data elements;

receiving, separately from the at least two data elements, a set of desired code point values corresponding to a data package;

determining a set of current code point values for the at least two data elements; and

comparing the set of current code point values to the set of desired code point values.

41. The article of manufacture of claim 40, wherein said series of steps further comprise the steps of:

determining if a change has occurred in the data package based on the comparison of the sets of code point values; and

if a change is determined to have occurred, requesting retransmission of at least one of the at least two data elements.

42. The article of manufacture of claim 40, wherein said series of steps further comprise the steps of:

determining if a change has occurred in the data package based on the comparison of the sets of code point values; and

if a change is determined to have occurred, preventing the use of at least one of the at least two data elements.

43. The article of manufacture of claim 40, wherein said series of steps further comprise the steps of:

determining if a change has occurred in the data package based on the comparison of

the sets of code point values; and

> if a change is determined to have occurred:

>> identifying the particular data element, of the at least two data elements, in which the change occurred, and

>> determining a corrective action to perform.

44. The article of manufacture of claim 43, wherein the corrective action is requesting a retransmission of at least one of the at least two data elements.

45. The article of manufacture of claim 43, wherein the corrective action is preventing use of at least one of the at least two data elements.

46. The article of manufacture of claim 43, wherein the corrective action to perform is determined based on characteristics of the particular data element in which the change occurred.

47. The article of manufacture of claim 40, wherein said series of steps further comprise the steps of:

> determining if a change has occurred in the data package based on the comparison of the sets of code point values; and

> if a change is determined to have occurred:

>> identifying the particular data element, of the at least two data elements, in which the change occurred, and

>> based on the similarity of a watermark in the particular data element in which

the change occurred to a corresponding watermark in the set of desired code point

values, determining that the particular data element may still be used.

48. The article of manufacture of claim 46, wherein the corrective action is determined based

on the particular data element in which the change occurred being related to the content rating

of the data package.

49. The article of manufacture of claim 40, wherein the at least two data elements and the set

of desired code points are received from at least one network component via different data

paths.

50. The article of manufacture of claim 40, wherein the at least two data elements is received

from a first network component and the set of desired code points is received from a second

network component.

51. An article of manufacture comprising a computer-readable medium having stored thereon

instructions adapted to be executed by a processor, the instructions which, when executed,

define a series of steps to be used to detect changes in a data package transmitted over a

network, said steps comprising:

receiving, from a first network component, a set of current code point values

corresponding to a data package at a code point monitor;

receiving, from a second network component, a set of desired code point values

corresponding to the data package at the code point monitor; and

comparing the set of current code point values to the set of desired code point values,

wherein the set of current code point values is determined at the first network component based on the data package received by the first network component.

52. The article of manufacture of claim 51, wherein the first network component is a set top box.

53. The article of manufacture of claim 51, wherein the code point monitor logs the result of the comparison.

54. The article of manufacture of claim 51, wherein said series of steps further comprise the steps of:

determining if a change has occurred in the data package based on the comparison of the sets of code point values; and

if a change is determined to have occurred, transmitting an instruction to perform a corrective action.

55. The article of manufacture of claim 54, wherein the corrective action is preventing use of at least a portion of the data package.

56. The article of manufacture of claim 54, wherein the corrective action is requesting retransmission of at least a portion of the data package.

57. The article of manufacture of claim 54, wherein said series of steps further comprise the steps of:

determining the particular data element in which the change occurred, and

determining the corrective action based on characteristics of the particular data

element in which the change occurred.

58. The article of manufacture of claim 57, wherein the corrective action is determined based

on the particular data element in which the change occurred being related to a content rating

of the data package.

59. The method of claim 1, wherein (a) the at least two data elements and (b) the set of

desired code point values are received over different communication paths with respect to

each other.

60. The method of claim 1, wherein each of the set of desired code point values is

successively received relative to one another.

61. The method of claim 1, wherein the at least two data elements are transmitted as a first

unit and the set of desired code point values are transmitted as a second unit different from

the first unit.

62. A method for detecting errors in a data package, comprising:

        receiving a set of desired code point values corresponding to a data package;

        storing the set of desired code point values;

        after the storing of the set of desired code point values, receiving at least two data

elements;

determining a set of current code point values for the at least two data elements; and

comparing the set of current code point values to the stored set of desired code point values.

EVIDENCE APPENDIX

No evidence has been submitted pursuant to 37 C.F.R. §§1.130, 1.131, or 1.132. No

other evidence has been entered by the Examiner or relied upon by Appellants in the appeal.

RELATED PROCEEDINGS APPENDIX

As indicated above in this Appeal Brief, there are no other prior or pending appeals,

interferences or judicial proceedings known by the undersigned, or believed by the

undersigned to be known to Appellants or the assignee, Home Box Office, Inc., "which may

be related to, directly affect or be directly affected by or have a bearing on the Board's

decision in the pending appeal." As such, there no "decisions rendered by a court or the

Board in any proceeding identified pursuant to [37 C.F.R. § 41.37(c)(1)(ii)]" to be submitted.